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OPC OF COUNSEL

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MAR 20 2005 PATENTS

While one can only speculate as to the Office's thought processes appertaining to the second Office action's 35 U.S.C. 103(a) rejection, it is possible that the Office has erroneously considered the previously existing claim limitations to have been addressed in the first Office action, albeit the first Office action rendered entirely different rejections with entirely different applied art. As to the present 35 U.S.C. 103(a) rejection, the Office cannot rely on any arguments that it made relative to the previous 35 U.S.C. 103(a) rejection, which is now "moot." Indeed, the term "moot" is used, in paragraph 4 of the second Office action, to describe the first Office action's 35 U.S.C. 103(a) rejection. "Where a reference is relied on to support a rejection, whether or not in a minor capacity, that reference should be positively included in the statement of the rejection." MPEP 706.02(j), citing *In re Hoch*, 428 F.2d 1341, 1342 n.3 166 USPQ 406, 407 n. 3 (CCPA 1970).

Accordingly, Applicant respectfully requests that the Office withdraw the finality of the Office action mail-dated 08/25/03.

Applicant respectfully requests that the Office enter the amendments proposed by the accompanying After-Final Amendment, and reconsider the application as amended thereby. "When a final rejection is withdrawn, all amendments filed after the final rejection are ordinarily entered." MPEP 706.07(e).

Respectfully submitted,


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ATTORNEY FOR APPLICANT

03/20/05
date

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20 March 2005

Serial No.: 09/671,871

Request to Vacate Final Rejection

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PATENTS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
GLEN G. WARD, DONALD J. COLLINS and : Confirm. No.: 8767
RICHARD A. STUTCHFIELD :
Serial No.: 09/671,871 :
Filing Date: 09/28/00 : Art Unit: 3626
Attorney Docket No.: 82,144 :
Title: OPERATING PLAN FOR MACHINERY : Examiner: Vanel Frenel

PETITION FOR EXTENSION OF TIME UNDER 37 CFR 1.136(a)

Hon. Commissioner of Patents and Trademarks
Washington, D.C. 20231

Sir:

This is a request under the provisions of 37 CFR 1.136(a) to extend the period for filing an Appeal Brief in the above-identified application. Notice of Appeal was filed on 21 December 2004.

The Office is respectfully requested to charge \$120 for a one-month extension of time, and to charge all other required fees, and to credit any overpayment, to Deposit Account No. 50-0958.

Please note Applicant's authorization, by the Fee Transmittal accompanying the application, to charge to Deposit Account No. 50-0958 any additional fee required under 37 CFR 1.16 and 37 CFR 1.17. 37 CFR 1.136(a)(3); MPEP 710.02(e).

Respectfully submitted,


HOWARD KAISER
Reg. No. 31,381
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03/20/05
date

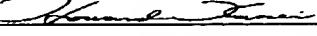
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I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office (Fax No. 703-872-9306)

on Sunday, 20 March 2005.

Typed or printed name of person signing this certificate

Howard Kaiser

Signature 

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